

**HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY**

WRIT APPEAL No.684 OF 2006

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Between:

The Executive Director,

APSRTC, Vizianagaram and others.

.....Appellants

AND

I.V.V.Gopal

.....Respondent

:: J U D G M E N T ::

Counsel for the appellants : Shri P.Padmanabha Rao for
Smt.B.G.Uma Devi

Counsel for the respondent : Shri K.Ramamohan Mahadeva

20th June, 2007

Per G.S.Singhvi, C.J.

This appeal is directed against order dated 25-8-2005 passed by the learned Single Judge, whereby he disposed of the writ petition filed by respondent – I.V.V. Gopal in terms of the judgment of the Supreme Court in **Divisional Manager, APSRTC v. P. Lakshmoji Rao**^[1].

The respondent was initially engaged as a Conductor on casual basis in Parvathipuram Depot of the Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation') on 29-12-1987. His engagement was discontinued on 20-7-1988. He was again engaged as a casual employee (Conductor) in Eluru Depot of the Corporation from 30-9-1988 to 4-1-1989. From 20-2-1989 to 16-11-1989, he worked in Tekkali Depot. From 28-12-1989 to 9-4-1990, he worked in Visakhapatnam (R) Depot, and from 10-4-1990, he worked as a casual employee (Conductor) in Simhachalam Depot of the Corporation. The particulars of the respondent's engagement are detailed hereunder:

- (I) 29-12-1987 to 20-7-1988 - Parvathipuram
- (II) 30-9-1988 to 4-1-1989 - Eluru
- (III) 20-2-1989 to 16-11-1989 - Tekkali
- (IV) 28-12-1989 to 9-4-1990 - Visakhapatnam (R) Depot
- (V) 10-4-1990 onwards - Simhachalam

By an order dated 18-2-1991, Divisional Manager, Visakhapatnam regularised his services with effect from 1-1-1991. The respondent did not question that order by availing appropriate legal remedy or even by lodging protest before the concerned authority. For the first time, he made a representation in January, 1999 for regularisation of his service with effect from 15-2-1989. By an order dated 27-7-1999, Regional Manager, Srikakulam rejected his

claim for regularisation of his service with effect from 15.2.1989, but changed the date of regularisation from 1-1-1991 to 1-8-1990. After about five months, the respondent submitted an appeal to the Executive Director of the Corporation for regularisation of his service with effect from 1-7-1989, but could not persuade the officer concerned to entertain his claim. He then filed Writ Petition No.12552 of 2000 for issue of a direction to the non-petitioners (the appellants herein) to regularise his service with effect from 29-12-1987. In the affidavit filed by him, the petitioner (the respondent herein) claimed that he is entitled to retrospective regularisation of service because the service of his junior namely, Sri K.Appa Rao, who was appointed after more than six months of his engagement, had been regularised from an earlier date. He also relied on the judgments of the Division Bench in **APSRTC v. P. T. Rao**^[2] and of the learned Single Judge of this Court in **A. Rajeshwar v. APSRTC**^[3] and pleaded that he is entitled to the benefit of regularisation with retrospective effect.

In the counter filed on behalf of the non-petitioners (the appellants herein), it was averred that the writ petitioner (the respondent herein) was engaged as Conductor on casual basis in Tekkali Depot from 21-1-1988 to 21-7-1988 and then in Eluru Depot from 30-9-1988 to 4-1-1989. It was further averred that in terms of the policy contained in circular dated 21-2-1989 issued by the Vice-Chairman and Managing Director of the Corporation, the services of those daily-wage drivers/conductors were regularised against available vacancies, who had completed one year or more service as on 15-2-1989, but the respondent's services were not regularised because as on that date, he had worked only for nine months and five days.

The learned Single Judge did not go into the merits of the claim made by the writ petitioners and disposed of the writ petition by recording the following order:

“When the matter is taken up for hearing, it is brought to the notice of this Court by the learned counsel for the petitioner that the issue involved in this petition is squarely covered by the judgment of the Supreme Court in **Divisional Manger, APSRTC v. P. Lakshmoji Rao**.

Following the same, the writ petition is disposed of in terms of the aforesaid judgment.”

Sri M. Padmanabha Rao, learned counsel for the appellants submitted that the judgment of the Supreme Court in **Divisional Manger, APSRTC v. P. Lakshmoji Rao** (supra) does not have any bearing on the respondent's claim for regularisation of service with retrospective effect because the employees who were parties in that case had been appointed after due advertisement and selection, whereas the respondent was appointed on casual basis, and the learned single Judge committed a serious error by disposing of the writ petition in terms of that judgment. He argued that the service of the respondent cannot be regularised with retrospective effect even in terms of circular dated 21-2-1989 because as on 15-2-1989, he had not completed one year's service.

Sri K. Ramamohan Mahadeva, learned counsel for the respondent supported the order of the learned Single Judge and argued that the direction given by him for retrospective regularisation of the respondent's service does not suffer from any patent legal infirmity and does not call for interference under Clause 15 of the Letters Patent because service of his junior namely, Sri K. Appa Rao had been regularised from an earlier date.

We have given serious thought to the arguments of the learned

counsel for the parties and perused the record.

We shall first consider whether the respondent's case is covered by the judgment of the Supreme Court in **Divisional Manger, APSRTC v. P. Lakshmoji Rao** (supra). The facts of that case were that pursuant to the advertisement issued by the Corporation, the respondents were selected as Conductors and appointed on daily wage basis. Initially, they were engaged for a fixed period. Thereafter, their services were extended from time to time and ultimately regularised after a year or two. After many years, they filed writ petitions under Article 226 of the Constitution for issue of a mandamus to the Corporation to regularise their services with retrospective effect. The High Court accepted the claim of the respondents and directed the Corporation to regularise their services with effect from the date of appointment. The Supreme Court reversed the order of the High Court by making the following observations:

“It is difficult to follow the logic or the reason behind the law laid down by the Division Bench. If the regularization has to take place in a phased manner subject to availability of vacancies etc. the question of according regular status to the employees right from the date of initial appointment on daily wages does not arise. Moreover, if the services of respondents in the writ appeal have already been regularized and they claim regular status from the date of initial appointment, the High Court should have addressed itself to the specific question whether the regularization after some period of daily-wage service was legally correct and recorded a finding thereon. The observations made and the directions given have only added to the dimension of controversy rather than solving the problem. How and in what manner the said judgment in P.T. Rao, which is sought to be relied upon by the appellants, was implemented, is not known. No details are available in this regard. However, it is difficult to construe the judgment in the said writ appeal as upholding the contention of the appellants excepting the passing observation that the

regularization could be done in a phased manner.”

After recording the above noted critical observations, the Supreme Court set aside the direction given by the Division Bench of this Court and ordained as under:

“In the light of the above discussion, we are of the view that the law laid down or the directions given in various writ petitions/writ appeals are not legally sustainable for more than one reason. Firstly, wrong criterion based on Section 25-B of the ID Act was applied in case after case. Secondly, the respondents and other similarly situated employees approached the Court under Article 226 long after their regularization, thereby unsettling the settled position. Thirdly, on the facts of these cases, it is evident that the services of the employees who were recruited as conductors were regularized within a reasonable time. The respondent employees were therefore treated fairly. No service rule or regulation or any other principle of law has been pressed into service by the respondents to claim regularization from an anterior date i.e. right from the date of their initial appointment as daily-wage employees.

For the above reasons, we should have, in the normal course set aside the judgments under appeal and dismissed the writ petitions. However, there are certain facts which stare at the appellants, that come in the way of these appeals being allowed in toto. We have to take note of the material fact that the appellants failed to question the adverse decisions by filing appeals at the appropriate time. They allowed many judgments to become final though they related to employees of the same region/division. For instance, Writ Petition No. 33077 of 1997 filed by twenty-six conductors was disposed of on the same day on which Writ Petition No. 33083 of 1997 (which is under appeal in CA No. 2455 of 1999) was disposed of. In the writ appeals which have given rise to CAs Nos. 3017 and 5881 of 1999, reference has been made by the Division Bench to Writ Petition No.26111 of 1998 disposed of on 4-11-1998 in which there were thirty petitioners. In the affidavit filed in the

High Court in Writ Petition No.33083 of 1997 which has given rise to CA No. 2455 of 1999, reference has also been made to two other writ petitions, namely, W.Ps. Nos.31361 and 14709 of 1996 decided on 19-4-1996 and 26-7-1996 respectively, wherein it was alleged that directions were given to regularize the services from the date of original appointment. Above all, it seems that the orders of the Division Bench passed in Writ Appeals Nos. 410 of 1997 and 1108 of 1997 (elaborately referred to supra) seem to have become final.

In view of this peculiar situation and in order to avoid the anomalies that might otherwise ensue, while we hold that the respondent employees have failed to establish their legal right to get the status of regular employees right from the date of their initial appointment on daily-wage basis and the respective dates of regularization assigned to the respondents cannot be legally faulted, we are inclined to mould the relief in modification of the directions given in the judgments under appeal and direct as follows:

If any of the conductors, junior to the respondents in the relevant seniority list of the concerned Division/Region, have got the benefit of seniority and regularization **OR** are entitled to get the same by virtue of the judgments that have become final, then the respondents who are seniors to them, shall be given the same benefit on the same principle.”

In our opinion, the respondent is not entitled to take benefit of the above noted judgment because he was not appointed after selection made by the competent authority. The facts brought on record show that the respondent was engaged as a Conductor on casual basis and he worked in that capacity in different depots. Such casual engagement did not create any right, much less a vested right in the respondent to be regularised from the date of initial engagement. Therefore, it must be held that the learned Single Judge committed a serious error by disposing of the writ petition in terms of the judgment of the Supreme Court in **Divisional Manger, APSRTC v.**

P. Lakshmoji Rao (supra).

The respondent's plea of discrimination deserves to be rejected on the short ground that he has not produced any evidence before the Court to show that his case was similar to that of Sri K.Appa Rao. The order by which Sri K.Appa Rao was initially engaged/appointed and the order by which his services were regularised have not been placed on record to enable the Court to determine whether the two cases are substantially similar. Therefore, the bald assertion contained in the affidavit filed in support of the writ petition cannot be made basis for recording a finding that the competent authority had discriminated the writ petitioner (the respondent herein) in the matter of regularisation of his service.

The matter deserves to be considered from another angle. The engagement of the respondent as Conductor on casual basis was not preceded by any selection. It is neither the pleaded case of the respondent nor the learned counsel argued that his client was appointed after due advertisement of the post and consideration of the competing claims of eligible persons. It is also not the respondent's case that before engaging him, the competent authority had sent requisition to the concerned Employment Exchange as per the mandate of Sections 3 and 4 of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (for short, 'the 1959 Act'). Therefore, it is reasonable to take the view that the respondent's engagement as a Conductor on casual basis was by back door method and was made without following any procedure consistent with the doctrine of equality enshrined in Articles 14 and 16 of the Constitution of India. We can take judicial notice of the fact that such appointments/engagements are made due to extraneous reasons. Those who are entrusted with the task of making appointments usually

abuse and misuse their authority for packing the government and public establishments with their kith and kin or favourites. In some cases, even money plays important role in the matter of engagement of casual/daily wage and ad hoc employees. This practice was unequivocally deprecated by the Supreme Court in **Delhi Development Horticulture Employees' Union v. Delhi**

Administration ^[4] in the following words:

“Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for, 240 or more days, has been leading. Although there is Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The Courts can take judicial notice of the fact that such employment is sought and given directly for various illegal consideration including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such back-door entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases

which come to the courts are of employment in Government Departments, Public Undertakings or Agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to continued for 240 or more days have to be absorbed as regular employees although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardised on both counts.”

Notwithstanding the above observations, the government officers and public authorities continue to make illegal appointments in total disregard to the doctrine of equality and in complete violation of the provisions of the 1959 Act. This pernicious practice received tacit approval of the courts in the form of directions given for regularisation of services of daily wagers, casual and ad hoc employees. The often-quoted decision of the Supreme Court in **State of Haryana v. Piara Singh**^[5] was used by different governments as ruse for making thousands of casual/daily wage and ad hoc appointments without any selection and regularisation of such appointments/engagements on the pretext of completion of 240 days, one year or two years service. The practice of making back door appointments/engagements by different governments and public authorities generated immense frustration among the young ones of the country who are well qualified and deserve employment in public service. They get themselves registered with the employment exchanges and wait in the serpentine queues of many kilometres with the fond hope that some day, the government or public authority will advertise the post and they will get

an opportunity to demonstrate their merit. However, major share of the government jobs goes to those who have some or other connection in the power corridors of the State and its agencies and instrumentalities. Such persons are initially engaged for a fixed period or on casual/temporary basis. After some time, their services are regularised by invoking humanitarian considerations. Fortunately for the country, this trend has been reversed by the judgment of the Constitution Bench of the Supreme Court in **Secretary, State of Karnataka v. Uma Devi**^[6]. After almost one and half decade, the Supreme Court realised the grave consequences flowing from the judicial approval of the policies of regularisation and overruled some of the previous judgments including **State of Haryana v. Piara Singh** (supra). Some of the propositions of law laid down in **Uma Devi's** case (supra) are as under:

“1) Persons who get employed, without following of a regular procedure or even through the backdoor or on daily wages, approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called “litigious employment”, has risen like a phoenix seriously impairing the constitutional scheme. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. Such an argument fails when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution. Merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made

permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right.

2) It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it.

3) When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made

permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

4) Orders for absorption, regularisation or permanent continuance of such employees are passed apparently in exercise of the wide powers under Article 226 of the Constitution. The wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognised by our Constitution, has to be seriously pondered over. It is time that the courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance tends to defeat the very constitutional scheme of public employment. It has to be emphasised that this is not the role envisaged for the High Courts in the scheme of things and their wide powers under Article 226 of the Constitution are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

5) The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as “litigious employment” in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the

State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

6) The State should not be allowed to depart from the normal rule and indulge in temporary employment in permanent posts. Regular recruitment should be insisted upon, only in a contingency can an ad hoc appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and appointments to non-available posts should not be taken note of regularisation. The Supreme Court is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. It is not the role of the courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. The approving of such acts also results in depriving many of their opportunity to compete for public employment. It would also mean that appointments made otherwise than by a regular process of selection would become the order of the day, completely jettisoning the constitutional scheme of appointment.”

On the basis of the above discussion, we hold that the learned Single Judge committed a serious error by disposing of the writ petition filed by the respondent in terms of the judgment of the Supreme Court in **Divisional Manager, APSRTC v. P. Lakshmoji Rao** (supra).

Before concluding, we may advert to the judgments of the Division Bench of this Court in **APSRTC v. P. T. Rao** and of the Single Judge in **A. Rajeshwar v. APSRTC** (supra), on which reliance has been placed by the learned counsel for the respondent for contending

that an employee completing 240 days service is entitled to the benefit of regularisation. In our opinion, these judgments can no longer be treated as laying down good law because the Division Bench judgment is entirely based on the judgment of the Supreme Court in **State of Haryana v. Piara Singh** (supra), which has been overruled by the Constitution Bench in **Secretary, State of Karnataka v. Uma Devi** (supra) and the judgment of the Single Judge in **A. Rajeshwar v. APSRTC** is based on that of the Division Bench in **APSRTC v. P.T. Rao** (supra).

In the result, the appeal is allowed. The order of the learned Single Judge is set aside and the writ petition is dismissed. We would have saddled the respondent with costs, but refrain from doing so because he is a low paid employee and must have been induced to indulge in litigation because of the judgment of the Supreme Court in **State of Haryana v. Piara Singh** (supra) and some other judgments of the Supreme Court including the two judgments to which reference has been made hereinabove.

As a sequel to disposal of the appeal in the manner indicated above, WAMP.No.1330 of 2006 filed by the appellants for interim relief is disposed of as infructuous.

G.S.SINGHVI, C.J.

20th June, 2007

C.V.NAGARJUNA REDDY,J.

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- [\[1\]](#) (2004) 2 SCC 433
- [\[2\]](#) 1998 (2) ALT 447
- [\[3\]](#) 1998(5) ALT 136
- [\[4\]](#) AIR 1992 SC 789
- [\[5\]](#) (1992) 4 SCC 118
- [\[6\]](#) (2006) 4 SCC 1